



In re the Application of: Patrick S. Cunningham	Date: 16 June 2008
Serial Number: 09/777,353	Group Art Unit: 3624
Filed:	Examiner: Kyle, Charles R.
Title: "An Application And Payment Database System For Lenders And Builders And Method Therefor"	Attorney Docket No: 8134-A-1 (formerly 3201P2284)

Commissioner for Patents
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Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. 1.131

Patrick S. Cunningham, the applicant in the above-identified patent application, declares as follows:

1. I am the sole inventor of the invention described and claimed in the above-listed patent application.
2. I am the founder and a major stake holder of AFP Solutions, Inc. which has its place of business in Scottsdale, Arizona, to which the above-listed patent application has been assigned.
3. I am currently president of AFP Solutions.
4. Prior to 2000, for several years and on numerous occasions, I had been involved in the construction industry and construction loan servicing. In particular, I worked with homeowners and lenders as a custom home builder. In that position, my customers typically secured financing and I would manage the building of the home. During the process of building a home, I would submit progress draws to receive payment for services rendered to date. I discovered inconsistencies between lenders and between progress draws that led to delays in payment and significant aggravation. These inconsistencies typically were caused by miscommunication between the various parties, i.e., the customer, the builder, the lender, and so forth.
5. On or about 12 June 2000, I conceived of the above-identified invention to standardize communication between the various parties by using the Internet to submit progress draws to various lenders and to standardize the data flow between the

various parties involved with a construction project. At approximately the same time that I conceived of the above-identified invention, I discussed my ideas with my wife, Jill R. Cunningham. Another declaration signed by my wife is included herewith corroborating our discussions.

6. On 14 June 2000, I refined the invention "on paper" by generating a Software Outline. The Software Outline and a computer screen shot showing its file name, and the dates upon which the Software Outline was created and modified, both dates being 6/14/2000, are included herein as Exhibit A. In addition, I began researching what it would take to put the pieces together to create the software product. This invention is the subject matter of the present patent application. It was conceived in the United States. At conception, this invention had at least two facets. One facet was to create standardized payment software that enables standardized forms for builder, vender/contractor, inspector, work item, project, and lender setup. Another facet was to utilize the payment software via a common communication format, particularly a Website accessible via the Internet.
7. From mid-June 2000 until October 2000, I researched database platforms and decided that the database platform to be used to create the payment software application was going to be Oracle. During that time, I engaged in telephone conversations with the local Oracle organization, Arizona Oracle Users Group to get their recommendation for a programmer to hire. Their recommendation was a company called Cybercilium, Inc.
8. In late October 2000, I had completed my research and was ready to invest into the start up of developing the payment software application.
9. As an independent inventor, I was relatively unfamiliar with privacy concerns regarding my invention. Accordingly, on 10 November 2000, I researched the Internet to learn about and locate a Nondisclosure Agreement, as indicated in documents downloaded from the Internet and included herein as Exhibit B.
10. On 20 November 2000, I sent a fax to my attorney, Mike Bate, at Gust Rosenfield, P.L.C., having an office in Phoenix, Arizona, regarding a sample Confidentiality and Non-Circumvent Agreement and asking that he review this Agreement and make the necessary changes to assure that I have protection during and after the development of the product, included herein as Exhibit C. In my fax, I explained that I

was considering pursuing the start up of a software product that banks would use with contractors, and that I have contacted an Oracle database programmer to discussed the venture.

11. Between 20 November 2000 and 30 November 2000, I contacted my attorney, Mike Bate, at Gust Rosenfeld, P.L.C. to ask his recommendation for a patent attorney to prepare and file a patent application for my invention.
12. On 30 November 2000, I received a fax from John L. Hay of Gust Rosenfeld, P.L.C. recommending patent attorney Louis J. Hoffman having an office in Scottsdale, Arizona, included herein as Exhibit D.
13. On 3 December 2000, I received a fax from John L. Hay of Gust Rosenfeld, PLC that included a draft of a nondisclosure agreement, included herein as Exhibit E.
14. Prior to 4 December 2000, I contacted patent attorney Louis J. Hoffman's office and set up a meeting with a patent agent, Edwin A. Suominen, an employee of the Law Offices Of Louis J. Hoffman PC, to discuss my invention with the intent being to perform a patentability search and if successful to prepare and file a patent application for my invention. A meeting was set for 10:00am on Monday, 4 December 2000.
15. On 4 December 2000, I met with Mr. Suominen and discussed the invention in detail. In particular, we discussed the use of the Internet to enable the general contractor, the lender, the inspector, and the owner to have access to an application for the purposes of improving the communication and the automatic updating of data in real time.
16. On 7 December 2000, I received a fax, dated 6 December 2000, from John L. Hay of Gust Rosenfeld, PLC that included yet another draft of a nondisclosure agreement, included herein as Exhibit F.
17. On 11 December 2000, I prepared a retainer check for \$1000.00 and hand-delivered it to the Law Offices Of Louis J. Hoffman PC so as to secure their services.
18. On 15 December 2000, I sent a fax to Edwin Suominen requesting a response; included herein as an Exhibit G. As explained in the fax, I understood that Mr. Suominen was to discuss the patent feasibility of my idea with Mr. Hoffman. As of the 15 December 2000 fax, I had not yet received a response as to whether I should proceed to the next step and do a patentability search.

19. Meanwhile on 2 January 2001, I received a fax of the final draft of the nondisclosure agreement from John L. Hay of Gust Rosenfeld, PLC.
20. On 3 January 2001, I received a letter from Donald Hertz of the Law Offices Of Louis J. Hoffman and a check in the amount of \$1000.00 for my un-used retainer, copies of which are included herein as an Exhibit H. My impression was that they were unwilling or unable to prepare a patent application for my invention.
21. On 8 January 2001, I met with patent attorney Jeffrey Moy of Weiss and Moy, P.C. We discussed my invention thoroughly including the use of the Internet to enable the general contractor, the lender, the inspector, and the owner to have access to an application for the purposes of improving the communication and the automatic updating of data in real time. At that time, I paid a retainer in order to begin the patent application preparation process directed toward an application and payment database system for lenders and builders. A copy of my American Express statement showing payment to Harry M. Weiss and Associates for Fees/Services is included herein as an Exhibit I.
22. On 9 January 2001, I sent a fax to David Weber of Cybercilium that included an attached nondisclosure agreement, included herein as an Exhibit J.
23. On 11 January 2001, I received a fax from David Weber of Cybercilium that included a marked up copy of the nondisclosure agreement, included herein as an Exhibit K.
24. On 11 January 2001, I filed for the domain name "applicationforpayment.com" via www.getaname.com. A copy of the Domain Registration application Form is included herein as an Exhibit L. This domain name was used to establish a loan website on a host server in accordance with my invention.
25. On 14 January 2001, I received e-mail confirmation for registering my domain name "applicationforpayment.com," a copy of which is included herein as an Exhibit M.
26. On 17 January 2001, the nondisclosure agreement was signed between myself and Cybercilium, Inc., a copy of which is included herein as an Exhibit N.
27. On 18 January 2001, I had a brief meeting with representatives of Cybercilium discussing their services. In


this meeting we discussed the development of a Contractor Payment Portal on the World Wide Web. In particular, this Contractor Payment Portal would act as the link between construction contractors and lenders and facilitate loan draws for construction projects, allowing the accurate and timely transfer of information between the contractor and the lender. This Contractor Payment Portal would also serve to eliminate redundancy of much of the "paper" processes currently being performed. In addition, we discussed allowing inspectors to have a portal access in order to submit the inspection results and to upload inspection images for access by the lender. We also discussed the ability to create forms and have those forms automatically sent to all parties including the subcontractors and vendors, allowing the contractor to choose from the portal a lender to select a project in order to submit a progress draw, and the ability to create reports for the general contractor, and the lender.

28. On 24 January 2001, Cybercilium provided a proposal for a Contractor Payment Portal in response to our meeting on 18 January 2001, a copy of which is included herein as an Exhibit O. It should be noted that the cover page indicates a date of 8 January 2000 and the remaining pages of the proposal indicate a date of 24 January 2000. However, the second paragraph on page 2 clearly indicates that this proposal is in response to the 18 January 2001 meeting. Accordingly, the dates of 8 January 2000 and 24 January 2000 are likely errors and not relevant given the express date of 18 January 2001 in the proposal.
29. On and prior to 24 January 2001, I further developed the invention "on paper" by generating a document entitled "Application for Payment Database System for use on the Internet," included herein as an Exhibit P. This document was provided from me to Jeffrey Moy of Weiss and Moy, P.C. so that he could have sufficient information regarding "the invention" in order to prepare the above-identified patent application. The system allows the lender and the builder to communicate data without error over the Internet for the purpose of loan draws for construction projects. As expressed in this document, a method for the application and payment of construction loans between lenders and builders includes:
 - (1) the builder/GC accessing a web site and filling out the lender's application which includes builder information as required by the lender (General Notes, page 3, item 1);
 - (2) the lender determining approval for the builder to obtain credit (General Notes, page 3, item 2);

- (3) upon approval, the builder requests approval for a loan for a new project by entering and electronically sending information related to the construction project via the website (General Notes, page 3, items 3, 4, and 5);
- (4) the lender determining approval of a construction loan for the project upon receipt of the information (General Notes, page 3, item 8);
- (5) submitting a request for payment from the builder to the lender via the loan website (General Notes, page 4, items 15 and 16; and
- (6) transferring funds from the lender to the builder after the request for payment is approved (General Notes, page 4, item 19).

30. I further declare that the above statements were made with the knowledge that willful false statements and the like are punishable by fine and/or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statement may jeopardize the validity of this application or any patent resulting therefrom.

Date: 6-16-08


Patrick S. Cunningham